

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

MARTIN AVERY HUGHES,

Petitioner,

v.

CIVIL ACTION No. 2:19cv42

**MARK J. BOLSTER, Warden,
FCI PETERSBURG (LOW),**

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2241 submitted by pro se Petitioner Martin Avery Hughes (“Hughes” or “Petitioner”). Petitioner is asking the court to vacate his 2009 sentence from the Western District of Virginia and resentence him without the enhancement in light of the Fourth Circuit’s decisions in United States v. Wheeler, 886 F.3d 415 (4th Cir. 2018) and United States v. Davis, 720 F.3d 215 (4th Cir. 2013). (ECF No. 1). While Hughes’ petition was pending, he obtained relief under the First Step Act of 2019, Pub. L. No. 115-391, § 404, 132 Stat. 5194, 5220 (2018), and was released from custody in April 2019. However, he continued to pursue relief under § 2241, arguing that, among other things, the requested relief would result in a shorter term of supervised release. (ECF No. 10).

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. Report of the Magistrate Judge was filed on August 29, 2019, recommending dismissal of Hughes’ petition, without prejudice, for lack of jurisdiction and terminating as moot his Motion Requesting that the 28 U.S.C. § 2241 Habeas

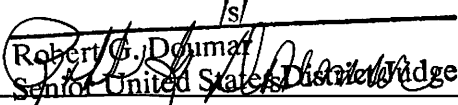
Proceeding Continue Unabated. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court has received no objections to the Magistrate Judge's Report and Recommendation and the time for filing objections has now expired.

Accordingly, the Court does hereby accept the findings and recommendations set forth in the report of the United States Magistrate Judge filed August 29, 2019, and it is, therefore ORDERED that Respondent's Motion to Dismiss be GRANTED, Hughes' petition be DENIED and DISMISSED without prejudice and his Motion Requesting that the 28 U.S.C. § 2241 Habeas Proceeding Continue Unabated be TERMINATED AS MOOT.

Finding that the basis for dismissal of Petitioner's § 2241 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so **within sixty (60) days** from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall mail a copy of this Final Order to Petitioner and provide an electronic copy of the Final Order to counsel of record for Respondent.



Robert G. Doumar
Senior United States District Judge
ROBERT G. DOUMAR
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

Sept. 26, 2019